

MAY 21 2010

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS**JUDICIAL COUNCIL  
OF THE NINTH CIRCUIT****IN RE COMPLAINT OF  
JUDICIAL MISCONDUCT**

No. 09-90140

**ORDER****KOZINSKI**, Chief Judge:

Complainant alleges that the district judge assigned to his criminal case improperly instructed the jury. This charge relates directly to the merits of the judge's rulings and must be dismissed. 28 U.S.C. § 352(b)(1)(A)(ii); Judicial-Conduct Rule 11(c)(1)(B). A misconduct complaint is not the proper vehicle to challenge a judge's rulings on the merits. See In re Charge of Judicial Misconduct, 685 F.2d 1226, 1227 (9th Cir. Jud. Council 1982).

Complainant also alleges that the judge met with the jury for "coffee and doughnuts" outside the presence of counsel. Complainant has not alleged that the judge and jury discussed anything "bearing on the substance" of his case, Code of Conduct for United States Judges Canon 3(A)(4), and "[t]he mere occurrence of an ex parte conversation between a trial judge and a juror" is not improper, United States v. Gagnon, 470 U.S. 522, 526 (1985) (emphasis omitted) (quoting Rushen v. Spain, 464 U.S. 114, 125–26 (1983) (Stevens, J., concurring in the judgment)).

This charge must therefore be dismissed for failure to allege conduct prejudicial to the effective and expeditious administration of the business of the courts. 28

U.S.C. § 351(a); Judicial-Conduct Rule 11(c)(1)(A).

**DISMISSED.**